

TEX-SPEC VENTURES

IBLA 87-673

Decided July 21, 1988

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting the second high competitive bid for oil and gas lease W-104945.

Affirmed.

1. Oil and Gas Leases: Competitive Leases--Oil and Gas Leases: Offers to Lease

Under the regulations in effect at the time of the decision, BLM was prohibited by 43 CFR 3120.7 from accepting a second highest bid which was less than 80 percent of the rejected high bid.

APPEARANCES: Gary Speckman, Managing Partner, Tex-Spec Ventures, Juda, Wisconsin, for appellant.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Tex-Spec Ventures (Tex-Spec) has appealed a June 12, 1987, decision of the Wyoming State Office, Bureau of Land Management (BLM), rejecting its competitive bid for oil and gas lease parcel No. 75 (W-104945), Pumpkin Buttes field, Campbell County, Wyoming.

Tex-Spec submitted the second highest bid for the parcel. By decision dated June 11, 1987, BLM rejected the high bid of \$6,898.40 because the check submitted as deposit of one-fifth of the bid amount was a company check and was not guaranteed in the manner required by the sale notice. Under 43 CFR 3120.4-1 remittances must be submitted in the form specified by the sale notice. See George H. Fentress, 99 IBLA 184 (1987). ^{1/} Appellant's second high bid of \$488.80 was rejected pursuant to 43 CFR 3120.7, which provides: "In no event shall an offer be made to the next highest bidder if the difference between his/her bid and that of the successful bidder is greater than one-fifth of the rejected bid or if the next highest bid is not otherwise acceptable."

Appellant argues that the high bid should not be considered when determining the acceptability of the Tex-Spec bid, as doing so penalizes appellant for the high bidder's noncompliance. In support of its position, appellant notes that strict application of the regulation would allow a party opposing the issuance of an oil and gas lease a means to prevent it

^{1/} The records of the Board show that no appeal was taken from the BLM decision rejecting the high bid.

from being issued. One wishing to prevent leasing for any reason could submit unreasonably high bids and enclose personal checks. Rejection of the high bid because of the improper form of payment would also cause the rejection of legitimate bids, and no lease would issue. The same process could be repeated each time the parcel is listed for bidding. Appellant argues that BLM should disallow a high bid which is not in compliance and accept the second highest bid, effectively treating it as the high bid.

This Board has not previously considered a BLM decision applying 43 CFR 3120.7. The provision originates with changes to the oil and gas leasing regulations proposed in 1982 for the purpose of reducing the regulatory burden imposed on the public. 47 FR 28550 (June 30, 1982). As proposed, the provision stated that a lease would not be offered to the second high bidder if the difference between the second bid and the high bid "is greater than the one-fifth bonus forfeited by the successful bidder." *Id.* at 28571. This wording was changed in the regulation finally adopted. 48 FR 33648, 33681 (July 22, 1983). Neither the preface to the proposed rules nor BLM's responses to comments published with the final rules mention the regulation, its purpose, or the reason for the change.

There is no need for us to determine the purpose of the provision. As written, the regulation clearly prohibits BLM from accepting the second highest bid if it is less than 80 percent of the amount of the rejected high bid. It is equally clear that appellant's bid is less than 80 percent of the rejected high bid. BLM had no choice but to apply the regulation. Nor does this Board. The regulation was properly promulgated pursuant to BLM's authority. *See* 5 U.S.C. § 553 (1982); *Robert H. Perry*, 87 IBLA 380, 388 (1985); *Kuugpik Corp.*, 85 IBLA 366, 370 (1985). Accordingly, we must affirm BLM's decision.

Appellant's point regarding possible abuse of the provision seems valid. However, there is no longer any reason for concern. By enacting the Federal Onshore Oil and Gas Leasing Reform Act of 1987, Congress revised the Federal oil and gas leasing system. P.L. 100-203, 101 Stat. 1330-256 (1987). BLM recently promulgated new regulations to carry out the provisions of the Act and the language applied to reject appellant's bid has been eliminated. 53 FR 22814 (June 17, 1988).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

R. W. Mullen
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

John H. Kelly
Administrative Judge